IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.
COMPANY PETITION NO.375 OF 2005

In the matter of Companies Act, 1956

And

In the matter of section 433, 434 and 439 of the Companies Act, 1956.

And

In the matter of winding up of M/s.Lok Housing & Constructions Ltd., Lok Bhavan, Marol Maroshi Road, Marol, Andheri (E), Mumbai-59, Lok Bharati Complex.

Mr.Narendra H. Shah,
R/a E/3, Aditya Apartment,
Old Nagardas Road,
Andheri (E),
Mumbai 400 069 ...Petitioner.

Mr.K.K.Malpathak for the Petitioner.
Mr.D.H.Mehta i/b Pravin Mehta & Mithi & Co. for the Respondents.

CORAM : S.J.VAZIFDAR, J.
DATED : 16th February, 2006.

P.C.:

1. According to the Petitioner, the Company is indebted to him in the sum of Rs.3,93,727/-.

2. The Petitioner claims this amount as dues as an employee of the Respondent Company. The Petitioner's

services were terminated by letter dated 2nd December, 2004 on account of various allegations made by the Company regarding inefficiency and the malpractices.

3. Thereafter, by a letter dated 3rd January, 2005, the Petitioner was reinstated and the letter dated 2nd December, 2004 was withdrawn.

4. Had the matter ended there,the Petitioner's claim even for the admission of the Petition may have been well founded. However, the fact remains that on 7th February, 2005, the Company issued a show-cause notice against the Petitioner in respect of the aforesaid malpractices and inefficiency. This raises a bona-fide dispute regarding the circumstances in which the letter dated 3rd January, 2005 was issued. The Respondent's case is stated in this letter dated 19th April, 2005 and in particular, paragraph 4 thereof. The same was allegedly done on a humanitarian ground in view of the Petitioner's daughter's marriage. Immediately, on receipt of Rs.2 lakhs, the Petitioner resigned on 24th January, 2005. He obtained the certificate from the Company stating that his services are satisfactory. There is some dispute regarding the circumstances in which the certificate was issued. The fact remains that pursuant to the letter dated 7th February, 2005, an enquiry is now in progress. The

Petitioner has even obtained the documents in regard thereto.

5. In the circumstances, I am unable to state that the dispute raised by the Company, at least at this stage is not bona-fide. In the event of the enquiry going in the Petitioner’s favour, the situation may change.

6. In the circumstances, as at present, the Petitioner’s remedy would be to file a regular civil proceeding for recovery of the said amount.

7. The Petition is, therefore, dismissed.